IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Madan lal Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.46/2004

DATE OF ORDER :: December 11, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

None present for the petitioner.
Mr.Ashok Upadhyaya, P.P.
None present for non-petitioner No.2.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 7.6.2003 passed by the learned Sessions Judge, Balotra (for short 'the revisional court' hereinafter), whereby the revision filed by the non-petitioner No.2, the first informant against the order dt. 28.6.2002 passed by the Additional Chief Judicial Magistrate, Balotra (for short 'the trial court' hereinafter), was allowed and the order of the trial court dt. 28.6.2002 recalling the order taking cognizance and dismissing the complaint was set aside.

I have gone through the memo of petition as also the order passed by the trial court as well as by the revisional court. On the challan having been filed by the police against the petitioner for the offences under sections 447 and 427 I.P.C., the trial court took the cognizance of offences and issued the process and in compliance thereof, the accused-petitioner appeared before the trial court and thereafter filed an application seeking recalling of the order taking cognizance and dismissing the complaint. By order dt. 28.6.2002, the trial court reviewed the order taking cognizance and dismissed the complaint. That order came to be challenged by the non-petitioner before the revisional court. The revisional court set aside the order of the trial court. In my view rightly so. The Code of Criminal Procedure does not contemplate the power of review or recall of the order except the provision of section 362 Cr.P.C., which provides that save as otherwise provided by this Code or by any other law for the time being in force, no Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

In the instant case, the order taking cognizance was a final order and it cannot be said that it involves a clerical or arithmetical error.

In Adalat Prasad vs. Roop Lal Jindal & Ors., **JT 2004 (7) 243,** the Hon'ble Apex Court held that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order; hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.

The view taken by the Hon'ble Supreme Court has been reiterated by a Three Judge Bench of the Hon'ble Supreme Court in Subramanim Sethuram vs. State of Maharashtra & Anr., **2004 CR.L.J. 4609**, which reads as under:-

> "Issuance of process under Section 204 is a preliminary step in the stage of trial contemplated in Chapter XX of the Code. Such an order made at a preliminary stage being an interlocutory order, same cannot be reviewed or reconsidered by the Magistrate, there being no provision under Code for review of an order by the same Court. Hence, it is impermissible for the Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order."

Keeping in view the decisions referred herein above, in my view the revisional court was justified in setting aside the order of the trial court.

The petition has no force and the same is dismissed.

[H.R.PANWAR],J.

m.asif/-